

AMENDED IN SENATE MAY 6, 2009

**SENATE BILL**

**No. 786**

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**Introduced by Senator Steinberg Yee**

February 27, 2009

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~~An act to amend Section 51 of the Civil Code, relating to civil rights.~~  
*An act to amend Section 425.16 of the Code of Civil Procedure, relating to civil procedure.*

LEGISLATIVE COUNSEL'S DIGEST

SB 786, as amended, ~~Steinberg Yee. Civil rights.~~ *Civil procedure: attorney's fees and costs.*

*Existing law subjects to a special motion to strike a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. Existing law entitles a prevailing defendant on that special motion to strike to recover his or her attorney's fees and costs.*

*This bill would prohibit that prevailing defendant from recovering attorney's fees and costs in the following actions: whenever it is made to appear by verified petition that certain public records are improperly being withheld from a member of the public, specified actions involving meeting provisions of the legislative body of a local agency or a state body, or an action to obtain a judicial determination that an action taken by a legislative body of a local agency or a state body is null and void, as specified.*

~~The Unruh Civil Rights Act generally prohibits business establishments from discriminating on the basis of sex, race, color,~~

religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation, as defined. The Unruh Civil Rights Act provides civil remedies for violations of its provisions.

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 425.16 of the Code of Civil Procedure is  
2     amended to read:

3     425.16. (a) The Legislature finds and declares that there has  
4     been a disturbing increase in lawsuits brought primarily to chill  
5     the valid exercise of the constitutional rights of freedom of speech  
6     and petition for the redress of grievances. The Legislature finds  
7     and declares that it is in the public interest to encourage continued  
8     participation in matters of public significance, and that this  
9     participation should not be chilled through abuse of the judicial  
10    process. To this end, this section shall be construed broadly.

11    (b) (1) A cause of action against a person arising from any act  
12    of that person in furtherance of the person's right of petition or  
13    free speech under the United States *Constitution* or the California  
14    Constitution in connection with a public issue shall be subject to  
15    a special motion to strike, unless the court determines that the  
16    plaintiff has established that there is a probability that the plaintiff  
17    will prevail on the claim.

18    (2) In making its determination, the court shall consider the  
19    pleadings, and supporting and opposing affidavits stating the facts  
20    upon which the liability or defense is based.

21    (3) If the court determines that the plaintiff has established a  
22    probability that he or she will prevail on the claim, neither that  
23    determination nor the fact of that determination shall be admissible  
24    in evidence at any later stage of the case, or in any subsequent  
25    action, and no burden of proof or degree of proof otherwise  
26    applicable shall be affected by that determination in any later stage  
27    of the case or in any subsequent proceeding.

28    ~~(c) In~~

29    (c) (1) *Except as provided in paragraph (2), in any action*  
30    subject to subdivision (b), a prevailing defendant on a special

1 motion to strike shall be entitled to recover his or her attorney's  
2 fees and costs. If the court finds that a special motion to strike is  
3 frivolous or is solely intended to cause unnecessary delay, the court  
4 shall award costs and reasonable attorney's fees to a plaintiff  
5 prevailing on the motion, pursuant to Section 128.5.

6 (2) *A defendant who prevails on a special motion to strike in*  
7 *an action subject to paragraph (1) shall not be entitled to*  
8 *attorney's fees and costs if that cause of action is brought pursuant*  
9 *to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the*  
10 *Government Code.*

11 (d) This section shall not apply to any enforcement action  
12 brought in the name of the people of the State of California by the  
13 Attorney General, district attorney, or city attorney, acting as a  
14 public prosecutor.

15 (e) As used in this section, "act in furtherance of a person's right  
16 of petition or free speech under the United States or California  
17 Constitution in connection with a public issue" includes: (1) any  
18 written or oral statement or writing made before a legislative,  
19 executive, or judicial proceeding, or any other official proceeding  
20 authorized by law; (2) any written or oral statement or writing  
21 made in connection with an issue under consideration or review  
22 by a legislative, executive, or judicial body, or any other official  
23 proceeding authorized by law; (3) any written or oral statement or  
24 writing made in a place open to the public or a public forum in  
25 connection with an issue of public interest; (4) or any other conduct  
26 in furtherance of the exercise of the constitutional right of petition  
27 or the constitutional right of free speech in connection with a public  
28 issue or an issue of public interest.

29 (f) The special motion may be filed within 60 days of the service  
30 of the complaint or, in the court's discretion, at any later time upon  
31 terms it deems proper. The motion shall be scheduled by the clerk  
32 of the court for a hearing not more than 30 days after the service  
33 of the motion unless the docket conditions of the court require a  
34 later hearing.

35 (g) All discovery proceedings in the action shall be stayed upon  
36 the filing of a notice of motion made pursuant to this section. The  
37 stay of discovery shall remain in effect until notice of entry of the  
38 order ruling on the motion. The court, on noticed motion and for  
39 good cause shown, may order that specified discovery be conducted  
40 notwithstanding this subdivision.

(h) For purposes of this section, “complaint” includes “cross-complaint” and “petition,” “plaintiff” includes “cross-complainant” and “petitioner,” and “defendant” includes “cross-defendant” and “respondent.”

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

~~SECTION 1. Section 51 of the Civil Code is amended to read:~~

~~51. (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.~~

~~(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.~~

~~(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.~~

~~(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require~~

1 construction, alteration, repair, or modifications that the State  
2 Architect otherwise possesses pursuant to other laws.

3 (e) For purposes of this section:

4 (1) “Disability” means any mental or physical disability as  
5 defined in Sections 12926 and 12926.1 of the Government Code.

6 (2) “Medical condition” has the same meaning as defined in  
7 subdivision (h) of Section 12926 of the Government Code.

8 (3) “Religion” includes all aspects of religious belief,  
9 observance, and practice.

10 (4) “Sex” has the same meaning as defined in subdivision (p)  
11 of Section 12926 of the Government Code.

12 (5) “Sex, race, color, religion, ancestry, national origin,  
13 disability, medical condition, marital status, or sexual orientation”  
14 includes a perception that the person has a particular characteristic  
15 or characteristics within the listed categories or that the person is  
16 associated with a person who has, or is perceived to have, a  
17 particular characteristic or characteristics within the listed  
18 categories.

19 (6) “Sexual orientation” has the same meaning as defined in  
20 subdivision (q) of Section 12926 of the Government Code.

21 (f) A violation of the right of any individual under the Americans  
22 with Disabilities Act of 1990 (Public Law 101-336) shall also  
23 constitute a violation of this section.